

fil

Notice of Allowability

Application No.

10/692,910

Examiner

Annette H. Para

Applicant(s)

LINTOTT, KEITH G.CA

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper submitted on December 17, 2004.
2. ☒ The allowed claim(s) is/are 1.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

Art Unit: 1661

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The information regarding the Chrysanthemum plant cultivar Peacock Royal described in the 2002 Garden Mum catalog refers as a possible offer for sale, more than one year prior to the filing date of this instant application. Sale or an offer for sale of the invention by the inventor, the assignee or by an independent third parties will bar applicant from obtaining a patent under 35 USC 102(b).

Concerning the relationship between Royal Van Zanten and Ball Seed Company Applicant states that Ball Seed was an independent company and was not controlled by Royal Van Zanten or Cleangro. In 2001 Ball Seed Company became the exclusive sales representative for Royal Van Zanten in the United States and Canada (page 2, response to requirement filed on December 17, 2004). When asked about the eventual sale of the claimed invention by Ball Seed Company, Applicant states that Ball Seed would not make or accept any order or offers until at least final pricing terms were agreed (response page 3).

To the question if the catalog constitutes an offer for sale to Ball Seed Company at the October 17, 2001 conference even if catalogs did not include any pricing information but prices could be obtained by contacting Royal Van Zanten directly, Applicant states that the catalog was merely an advertisement disclosing the Chrysanthemum varieties of Royal van Zanten. The catalog does not make any reference to the sale or offer of sale of any particular variety in the catalog (response page, 3).

When asked whether sales representatives of Ball Seed were able to place orders for the claimed variety at the time of the conference with Royal Van Zanten on October 17, 2001 Applicant states that he is not aware of any evidence of such an offer or sale, and to the Applicant's best knowledge, no such sale or offer ever occurred (response page 5).

When asked for further information regarding sales made by Royal Van Zanten directly to a limited number of customers Applicant states that to his best knowledge, any such sales would

Art Unit: 1661

only have occurred by direct contact with a select few customers based upon the varieties shown in the 2002 catalog.

Finally to the question if any order for the plant were received prior to October 24, 2001 Applicant states that he is not aware of any direct sale or offer of sale of the variety that is the subject of this application more than one year prior to the effective filing date or prior to the mailing of the 2002 catalog (response page 6).

Applicant also states that the instant cultivar had not been sold, offered for sale or publicly available in the United States or anywhere, more than one year prior to the effective filing of the U.S. application (page 4 of IDS filed June 14, 2004). Moreover applicant state that the instant variety has not been the subject of an application for protection in any other country, or appeared in any other printed publication, more than one year prior to the U.S. filing date for this application. (page 4, IDS)

As a result there is no evidence of the instant plant being described in a printed publication anywhere in the world or in public use or on sale in this country, more than one year prior to the filing date of this instant application.

The specification provides as complete a botanical description as reasonably possible of the claimed plant. The completeness of the description is sufficient to distinguish this new plant from the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Future Correspondence

Art Unit: 1661

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H. Para whose telephone number is (571) 272-0982. The Examiner can normally be reached Monday through Thursday from 5:30 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax numbers for the group is (571) 273-8300. The Technology Center phone number is (571) 272-1600. Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 872-9305.

AHP


ANNE MARIE GRUNBERG
PRIMARY EXAMINER